IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 1939 OF 1988

For Approval & Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?

2. To be referred to the reporters or not ?

3. Whether their lordships wish to see the fair copy of the judgment ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?

5. Whether it is to be circulated to the Civil Judge?

RAMANBHAI BHAILAL PATEL & ORS.
VERSUS
THE STATE OF GUJARAT

Appearance:
MR SB VAKIL for Petitioners
MR SK PATEL for Respondent

Coram: MR.JUSTICE S.K. Keshote,J
Date of decision: 30/12/1999

C.A.V. JUDGMENT

#. This is a matter arising under the Gujarat Agricultural Lands Ceiling Act, 1960 (Act No.27 of 1961). The petitioners, in all, five in number, by this writ

petition under Article 227 of the Constitution of India, challenge the order dated 29th December 1987 passed by the Gujarat Revenue Tribunal at Ahmedabad, confirming thereunder, the order dated 23rd August, 1984, of the Deputy Collector, Dabhoi, in Revision Application No.5 of 1984. The Deputy Collector, Dabhoi, in Revision Application No.5 of 1984 decided on 23rd August 1984 held that the petitioners are association of persons and each cannot be treated to be a unit for the purpose of determining the ceiling limit of the land under the Act aforesaid. They are to be considered one unit and accordingly the case under the said Act came to be decided. This order, as said earlier, came to be confirmed under the impugned order. Hence, this special civil application before this court.

#. The petitioners have come up with the case that the petitioners and their wives have entered into an agreement to purchase land in equal shares, if necessary, in the name of all the persons. As per the case of the petitioners, they are in all ten persons. Accordingly, 172 acres and 36 gunthas of agricultural lands of village Madheli were purchased under various sale deeds, details of which are as under:

Annexure	Date of Sale Deed	Area
Annexure-E	14.9.1970	128 a. 26 g.
Annexure-F	29.4.1971	26 a. 37 g.
Annexure-G	23.6.1971	10 a. 14 g.
Annexure-H	18.12.1971	6 a. 39 g.

#. On 30th December 1971, as per the case of the petitioners, they and their wives divided the lands aforesaid purchased amongst themselves. On 22.3.76, there was a partition by meets and bounds. On 25.2.76, mutation entry No.1371 in the respective names has been made by the competent revenue officer. The proceedings have been drawn by the Mamlatdar and Agricultural Land Tribunal, Taluka: Vaghodia, District: Vadodara as he was of the opinion that the petitioners held lands in excess of the agricultural land ceiling. Before the Mamlatdar and Agricultural Land Tribunal, Vaghodia, the petitioners have come up with the case that there are five sects of co-owners, the petitioners are not the members of the same family, the lands at Vasan were not agricultural lands, and part of the lands of village Madheli were Kotar lands and suffered from erosion, that

these are not agricultural lands. The Mamlatdar and Agricultural Land Tribunal, Vaghodia, under its order dated 30th November 1983, held that each co-owner is entitled to hold 36 acres of land and accordingly the lands admeasuring Acre 1 - 31 Gunthas was declared to be agricultural land in excess of ceiling limits with the petitioners. The petitioners, on 17th April, 1984, handed over possession of Acre 1 - 19 Gunthas of land declared excess to ceiling limits to the competent authority. The Deputy Collector, Dabhoi, issued notice under Section 37 of the Agricultural Lands Ceiling Act, 1960, (hereinafter referred to as the "Act, 1960"), to the petitioners to show cause why the order of Mamlatdar and A.L.T., Vaghodia, should not be revised. On 18th June 1984, the Deputy Collector, Dabhoi, also issued notice under Section 211 of the Bombay Land Revenue Code for revision of Mutation Entry No.1371. The Deputy Collector, Dabhoi, under its order dated 23rd August, 1984, set aside the order of the Mamlatdar and A.L.T, Vaghodia, dated 30th April, 1983, and he held that all the five co-owners were `person' within the meaning of Act and entitled to hold only one unit. Accordingly, it has been declared that the petitioners are holding 45 acres 31 gunthas of agricultural lands in excess of ceiling limit.

#. This order of the Deputy Collector, Dabhoi, was carried by petitioners in revision before the Gujarat Revenue Tribunal, Ahmedabad, which came to be rejected under the order dated 29th December, 1987. Hence this special civil application before this court.

#. The learned counsel for the petitioners contended that the petitioners are agriculturists and not collectively `person' as defined under Section 2(21) of the Act, 1960, which defines `person' as including a joint family. He submits that Section 2(21) of the Act, 1960, in terms enacts that unless the context requires otherwise, `person' includes a joint family, as this definition is inclusive and extends the general meaning of word `person'. In his submission, the Gujarat Revenue Tribunal, Ahmedabad, has committed a serious illegality in extending the meaning of the word `person' in the Act, 1960, to include co-owners by applying definition of `person' given in Section 3(35) of the Bombay General Clauses Act, 1904. Carrying this contention further, Shri S.B.Vakil, learned counsel for the petitioners submitted that the Act, 1960 is a Special Act in which `person' has been defined and therefore definition given therein of the word `person' would therefore prevail so far as the Act, 1960 is concerned over the definition of

`person' given in the Bombay General Clauses Act, 1904. In his submission, Section 2(21) of the Act, 1960, is very clear, specific and without any ambiguity therein and the definition of `person' in the Bombay General Clauses Act, 1904, cannot be applied to the matters under the Act, 1960. It has next been contended that the Bombay General Clauses Act, 1904, was enacted to shorten the language used in the Bombay Acts. It is adopted for interpretation of the Gujarat Acts also. But definition given in Section 3 of the Act aforesaid would not apply unless there is anything repugnent in the context or subject in the Act in issue. He submits that definition under Section 3(35) of the Bombay General Clauses Act, 1904, is repugnant to the subject of interpreting `person' in the context of the provisions of the Act, 1960. In this respect, he made reference to the provisions as contained in Section 2(21), 6(2) and 6(3)(c) of the Act, 1960. He further submits that if the definition of a `person' in Section 3(35) of the Act, 1904, is made applicable to interpret the word `person' in Section 6 of the Act, 1960, co-owners do not come within the said definition. It is not the finding of the Tribunal in his submission that the co-owners are a company or association of persons. Contrary to it, its finding is that the co-owners would be a body of individuals within the meaning of Section 3(35) of the Bombay General Clauses Act, 1904. The body of individuals follows particular and specific words, namely, `company and association' are required to be considered as ejusdem genres with the word `company' or `association' and would be confined to things of the same kinds as company or association. Lastly, it is contended that the total lands could not have been taken to be agricultural land for the purpose of determining the agricultural ceiling limits of the lands with the petitioners. In support of these contentions, the learned counsel for the petitioner placed reliance on the following decisions:

* AIR 1962 SCA 96 : IX GLR 486

* AIR 1969 SC 600

* AIR 1914 NAGPUR 26

* AIR 1930 PC 300

* AIR 1956 SC 354

* AIR 1958 SC 1 PP 2

* 1994 Supp. (2) SCC 556

#. Mr.S.K.Patel, learned counsel for the respondent-State contends that this matter is squarely covered by decision of this court reported in 1994(1) GCD 632. It has next been contended that the sale deeds dated 14.9.70, 29.4.71, 23.6.71, 18.12.71 were made in anticipation in order to defeat the objects of the Act, 1960, as amended by the Act of 1972. It has further been contended that the petitioners have not filed any application under sub-section 2 of Section 8 of the Act, 1960 and as a result thereof, these sale deeds were to be ignored and rightly have been ignored in computation of the area of surplus lands under the Act, 1960. So far as the sale deed dated 14th September 1970 is concerned, the learned counsel for the respondent-State submitted that division made of the land in the year 1976 is contrary to the provisions of Section 8 of the Act, 1960. It is urged that the Kotar lands would not have ben excluded while computation under the Act, 1960, of the surplus lands of the persons as these lands could have been made cultivable.

#. I have given my thoughtful considerations to the submissions made by learned counsel for the parties.

#. It is a serious matter, but the State of Gujarat has taken it to be not a serious one. As usual, in this matter, the approach of the State of Gujarat is most casual as what it is there in other cases. The State of Gujarat has not cared to file reply to the special civil application. An important legal issue has been raised on the question of what meaning has to be given to the word `person' as used in of Section 2(21) of the Act, 1960. Another important legal question has been raised by learned counsel for the petitioners that this word, `person' has to be restricted only to the extent to include therein a joint family and not association of persons by importing the definition of persons as given in the Bombay General Clauses Act, 1904. On this important legal question, I am constrained to state that no assistance worth the name is forthcoming from the State of Gujarat either in the form of written reply or submission or by oral arguments. The learned counsel for the State has not made any submission on these legal points raised by learned counsel for the petitioners. The learned counsel for the petitioners has given the list of dates and events together with the submissions and gist of authorities on which he placed reliance in support thereof. A copy of the same was given to the learned counsel for the respondent. The matter has been

adjourned so that the learned counsel for the respondent State can study the matter and if necessary, file written submissions, but he has not filed written submissions as well as orally he has not made any submission except to say that the definition as given in the General Clauses Act, 1904 of a `person' can be read in the Act, 1960. Even the judgment on which he placed reliance in fact has been cited by learned counsel for the petitioners. Be that as it may, in case effective assistance in these matters is not provided or is forthcoming from the State of Gujarat, then there are all possibilities of committing some mistake by the courts on the question of law. Only one sided picture is projected or placed for consideration before the court and whether what it is projected is correct or not, in the absence of any defence from the respondent's side is very difficult for the courts to decide. In such matters, possibility may be there of committing some mistake in interpreting the law or definition given in the Act. In such matters, more effective and purposeful assistance is necessary from the side of State and more so when the decision given in this case on the point raised by the learned counsel for the petitioners may have serious repercussions and the possibility of defeating of the very purpose and object for this beneficial Act has been enacted cannot be ruled out. But there is no mechanism or control of this court on the respondents where it could have ordered them to file written submissions or make oral submissions. It is the concern of the State of Gujarat and it has to take care of the matter. There must be some system at Gandhinagar so that on such legal issues proper assistance is provided to the court through Government advocates and all the relevant case law is looked into and cited before the Court. Be that as it may, whatever handicaps to which the courts are subjected in the majority of litigations wherein the State of Gujarat is party, matters are to be decided. However, it is unfortunate that despite of setting a budged of handsome amount of Rs.1.19 crores (for the financial year 1998-99) in substantial number of cases, so far this court is concerned, this is the only assistance being provided or forthcoming from the State of Gujarat. The courts have to decide the matters irrespective of lapses and carelessness on the part of the officers of the State of Gujarat in defending the cases. Before proceeding further with the judgment, I may submit that on the question of facts, there may be some difficulty for the learned counsel who is appearing for the respondent-State to make submissions in the absence of reply to the special civil application, but so far as the legal points are concerned, it is solely concern of the Government

advocate for which neither reply to the special civil application nor record of the proceedings as well as presence of any Government officer is necessary. This is a matter to be taken care of and gone into for the Government by its advocate to assist the court on legal questions. That much of assistance on this legal question has not been given by the learned counsel who is appearing for the State. In this case, on facts, there is no dispute and decision of this case solely depends on the legal issues raised by learned counsel for the petitioners.

#. Admittedly, the petitioners and their wives divided, as per their own case, the purchased lands on 30th December, 1971, i.e. after 24th day of January 1971. The partition as per the case of the petitioners of the lands in question by meets and bounds has taken place on 22nd March, 1976, i.e. after 24th of January 1971. Section 8 of the Act, 1960 reads as under:

8. Transfers or partitions made after 15th January 1959 but before commencement of this Act.

(1) Where after 15th day of January, 1959, but before commencement of this Act, or after 24th day of January, 1971, but before the specified date, any person has transferred whether by sale, gift, mortgage, with possession, exchange, lease, surrender or otherwise or partitioned any land held by him, then notwithstanding anything contained in any law for the time being in force such transfer or partition shall, unless it is proved to the contrary, be deemed to have been made in anticipation in order to defeat the object of this Act. Where such transfer or partition was made after 15th day of January 1959 but before the commencement of this Act or in order to defeat the object of the Amending Act of 1972 where such transfer was made after 24th day of January, 1971 but before the specified date;

Provided that where any transfer or partition of land is effected by a document required by law to be registered which is however not registered and such document, purports to have been executed before 24th day of January, 1971 no court shall pass a decree in any suit filed for the grant of specific relief on the basis of any such document unless the court is satisfied on merits of the case that the document is a bonafide document

executed in fact before 24th January, 1971, and that it is not ante dated as a result of collusion between parties or otherwise in order to defeat the object of the Amending Act of 1972;

Provided further that nothing in this sub-section shall apply to any transfer of land by way of gift or partition made on or after the 24th January 1971, to a son who was major on the said date.

(2) Any person affected by the provisions of sub-section (1) may, within the prescribed period and in the prescribed form, make an application to the Collector for a declaration that the transfer or partition was not made in anticipation in order to defeat the object of this Act, or as the case may be, of the Amending Act of 1972

(3) On receipt of such application, the Collector shall hold an inquiry and after giving an opportunity to the transferor and the transferee or as the case may be, to the parties to the partition, to be heard and after considering the evidence which may be produced decide whether the transfer or, as the case may be the partition was or was not made in anticipation in order to defeat the object of this Act, or, as the case may be, of the Amending Act of 1972 and accordingly may --

(i) reject the application, or

(ii) by order in writing make a declaration that the transfer or, as the case may be, the partition was not made in anticipation in order to defeat the object of this Act, or as the case may be, of the Amending Act of 1972

(4) Where the application is rejected, the transfer or, as the case may be, the partition shall be ignored in computing under this Act the area of surplus land, if any, held by such person.

##. From this section, I find that there is a deeming clause that in case where transfer of the agricultural land whether by sale, gift, mortgage with possession, exchange, lease, surrender or otherwise or partition made after 24th day of January 1971 but before the specified

date unless it is proved contrary shall be deemed to have made in anticipation in order to defeat the object of the Act. However, this presumption is subject to the rebuttal which is clearly borne out from clause (2) of section 8, for which it is the duty of the transferor or transferee, as the case may be, to apply to the Collector for a declaration that transfer or partition was not made in anticipation in order to defeat the object of the Act, 1960, as amended by the Act of 1972. It is no more res-integra that the transferee can also apply for such a declaration under sub-section 2 of Section 8 of the Act, 1960. Sub-section 4 of Section 8 of the Act, 1960 provides that where the application filed under sub-section 2 is rejected, the transfer or as the case may be, the partition shall be ignored in computing under this Act the area of surplus land, if any, held by such person. This point has been raised before the Tribunal by the learned counsel for the State which is borne out from reading of para-8 of the judgment, which reads as under:

> 8. The next contention of Shri Sager was that the lands have been purchased by five persons jointly and the lands have been partitioned subsequently after 24.1.71 and therefore unless there is a sec.8 application filed by the present applicants, partition cannot be taken into account. Besides he also argued that the word `person' includes association of persons and hence the order passed by the Assistant Collector is quite legal and proper and need no interference by way of revision under sec.38 of the Act.

##. It is unfortunate that the Tribunal has not referred to, what to say to discuss and decide this point raised by learned counsel for respondent before it. It has decided the matter only with reference to the point raise, re.: definition of `person' in the Act, 1960. Once a point has been raised before the Tribunal, it has to be decided whether it is decided in favour of party raising it or not is a different matter. The orders of the Tribunal are subject to judicial review by this Court under Article 227 of the Constitution and in such matters, it is always advisable and expected from the Tribunal to decide all the points, contentions and grounds raised by the respective parties in support of their cases. When the matter comes up before this Court, then the Court even if it is not satisfied that the

decision of the Tribunal on particular ground, contention or point is correct, still it can decline to interfere with the same in case it is satisfied with its decision on other points on which it can be maintained. In case this point would have been decided by the Tribunal and when it decides in favour of respondent in this matter, it would not have been necessary for this court to go on and decide other points raised by learned counsel for the petitioners. Moreover, in the matters where the State of Gujarat is a party, it is essential and necessary and not only advisory to decide all the points raised, by the Tribunal as before this Court seldom, effective, real and contesting assistance is forthcoming from the side of the State of Gujarat, this what it is clearly borne out from this case itself.

##. This special civil application has been admitted by this court on 20th April, 1988 and interim relief has also been granted by this court in terms of para-7(c). Para-7(c) of the special civil application reads as under:

7(c) to stay pending the hearing and final disposal of this petition the operation, implementation and execution of the order dated 29.12.1987 of the Gujarat Revenue Tribunal in Revision Application No.TEN.B.A. 1243 of 1984 confirming the order dated 23.8.1984 of the Deputy Collector, Dabhoi in Ceiling Revision No.5 of 1984 and to restrain the respondent, its servants and agents from compelling the petitioners to select A.145-31 G. of the so called excess land in accordance with the impugned orders of the Deputy Collector and the Revenue Tribunal.

##. So the lands in dispute remained in possession with the petitioners for all this time. The Tribunal, though has decided other points in favour of respondents, it has not examined this issue in the perspective in which it has to be looked into, discussed and decided. The Judgment of the tribunal on point decided by it is also very sketchy. Only the Tribunal may not be blamed but possibly sketchy judgment of its may be for the reason that the matter is not presented and argued in the form and substance what it has also not been done before this Court. As I find it to be a fit case to remand this matter for decision on the ground raised with reference to Section 8 of the Act, 1960, it is also in the larger interest of the parties to remand this matter also for fresh decision on the point whether `person' includes under the Act, 1960, the association of persons or not. These questions are to be first decided by the

Tribunal.

##. For the reasons aforesaid this writ petition succeeds and the same is allowed and the order dated 29.12.1987 of the Gujarat Revenue Tribunal in Revision Application No.TEN.B.A. 1243 of 1984 confirming the order dated 23.8.1984 of the Deputy Collector, Dabhoi in Ceiling Revision No.5 of 1984, is quashed and set aside and the Tribunal is directed to restore it to its original number and decide the same on merits after hearing the parties on all the points which have been earlier raised and which further may be raised by them namely, on the question of the definition of `person' as given under the Act, 1960, and whether the definition as given of this word in the Bombay General Clauses Act, 1904, can be imported to the Act, 1960, after considering all the points and authorities as given out in the written submission by the learned counsel for the petitioners before this Court. The office is directed to send a copy of the list of dates and events given by the learned counsel for the petitioners in this case to the Tribunal, along with the writ of this order. Rule is made absolute in aforesaid terms. No order as to costs.

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(sunil)